IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 16393 of 2003

Between:

K.Suryanarayana s/o Satyam, Record Assistant,
I Additional Junior Civil Judge., Tanuku., West Godavari District.

..... PETITIONER

AND

1 The High Court of Andhra Pradesh, rep.by its Registrar,

High Court Buildings, Hyderabad.
2 The District Judge, West Godavari Dist. Eluru.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more particularly one in the nature of a Writ of Certiorari; a) By calling for the records relating to and connected with the endorsement made on 11-12-2002 returning the representation submitted by the petitioner on 04-12-2002 and quash the same; consequently direct the 2nd respondent to consider the representation submitted by the petitioner on 04-12-2002 on merits.

Counsel for the Petitioner: MR.NOOTY RAM MOHAN RAO

Counsel for the Respondents: SMT.M.BHASKARA LAKSHMI (SC FOR APHC)

The Court made the following:

ORDER:

Petitioner was removed from service as Process-server in West Godavari by order passed by the Principal District Judge, West Godavari, w.e.f. 04.09.1998. The order of removal was affirmed in appeal on 09.02.1999. In order to challenge these orders, W.P.No.8355 of 1999 was filed which was partly allowed by the High Court, on technical grounds. The order of punishment was set-aside and it was observed that it was not a fit case for award of any back wages to the petitioner. Thus, while setting aside the order of punishment of removal from service as affirmed by the High Court, the District Judge was directed to consider the question of quantum of sentence to be imposed on the petitioner afresh without reference to his past misconduct or lapses. Pursuant to these directions, District Judge passed an order dated 16.07.1999 imposing penalty of compulsory retirement from service with effect from 04.09.1998. Against this order, appeal was preferred on administrative side of the High Court, which was partly allowed and punishment of compulsory retirement was modified to that of withholding of two increments without cumulative effect. District Judge, West Godavari, was directed to issue consequential orders and report compliance. Accordingly, on 15.12.1999, the District Judge, West Godavari, directed the petitioner to be posted to work as Process Server in Senior Civil Judge's Court, Thadepalligudem, and also observed that he is not entitled to back wages as per the orders of the High Court passed in W.P.No.8355 of 1999. This order is under challenge by the petitioner in this writ petition.

We have heard the learned counsel for the parties.

Needless to add that against the order under challenge in this writ petition, representation was submitted, but no decision was taken on the ground that the petitioner should get the order passed in W.P.No.18355 of 1999 reviewed.

The grievance of the learned counsel for the petitioner is that any order as to how the period from the date of imposition of penalty of removal from service till the petitioner was reinstated has to be

decided in accordance with the principles laid down in F.R.54, only after issuance of show-cause notice and opportunity of being heard, which is not been done in the instant case.

W.P.No.8355 of 1999 was decided on 16.06.1999. Obviously, as on that date, there was no question open before the Court as to the back wages payable to the petitioner. On that date, the order operating against the petitioner was that of removal from service and thus, the petitioner stood removed from service on 04.09.1998 and thus, while disposing of the writ petition and setting aside the said order, the Bench observed that the petitioner will not be entitled to back wages. It would mean that in case, there was any claim for back wages up to 03.09.1998, petitioner will not be entitled to any back wages. Therefore, necessarily such an order has to be passed only on complying with the provisions of F.R.54, after issuing show-cause notice. On 16.06.1999 when the earlier writ petition was decided, there was no question of how the period would be treated after the dismissal of the petitioner from service inasmuch as the High Court had not suggested nor could have suggested as to the likely punishment to be imposed upon the petitioner. The punishment was yet to be imposed and that question was left open. The ultimate order which the District Judge passed on 16.07.1999 was imposing penalty of compulsory retirement from service. Therefore, with effect from 16.07.1999, the question as to how the intervening period is to be treated would not have arisen for consideration. It was only when the High Court, on administrative side, on 02.12.1999 disposed of the appeal of the petitioner by modifying the punishment of compulsory retirement to that of withholding of two increments without cumulative effect, that on and from the said date that question would arise of treating the period for various purposes as envisaged in Fundamental Rule-54. Obviously, when direction was issued to the District Judge to issue consequential orders, it was incumbent for the District Judge to pass appropriate orders as to the treatment of the said period from 04.09.1998 to the date of reinstatement i.e., 17.12.1999, which could be only be done after issuing show-cause

notice to the petitioner and after hearing him in accordance with law. Consequently, we allow the writ petition and set aside the order dated 15.12.1999 passed by the District Judge, West Godavari, at Eluru, with direction to pass fresh orders as to how the period from 04.09.1998 to 17.12.1999 is to be treated, in accordance with law. The same will be done within a period of three months from the date of receipt of the writ order from the Court.

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(DEVINDER GUPTA, CJ)

16.02.2005

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(B.SESHASAYANA REDDY, J)

DR

That Rule nisi has been made absolute.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice, on this Wednesday, the

sixteenth day of February, Two thousand and five.

To

1 The High Court of Andhra Pradesh, rep.by its Registrar,

High Court Buildings, Hyderabad.
2 The District Judge, West Godavari Dist. Eluru.

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